

RESOLUTION NO. 4 4 9 6

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONTRACT FOR PUBLIC DEFENSE SERVICES FOR JULY 1, 2009 – DECEMBER 31, 2009 BETWEEN THE CITY AND THE LAW OFFICES OF MATTHEW J. RUSNAK

WHEREAS, the State legislature finds that effective legal representation should be provided for indigent persons consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where right to counsel attaches; and

WHEREAS, the City of Auburn Municipal Court presides over cases involving indigent persons and the City of Auburn provides Public Defense Services; and

WHEREAS, the City of Auburn desires to continue to contract its Public Defense Services; and

WHEREAS, it is fiscally responsible for the City of Auburn to periodically “shop” for quality defense services with the best return on its investment; and

WHEREAS, the City of Auburn published a Request for Proposal for the purpose of reviewing bids that provide quality public defense service; and

WHEREAS, the City of Auburn has reviewed each proposal submitted in accordance with the Request for Proposal; and

WHEREAS, the City of Auburn finds the bid of The Law Offices of Matthew J. Rusnak best meets the requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Purpose. The City Council hereby authorizes the execution of the Agreement between the City of Auburn and THE LAW OFFICES OF MATTHEW J. RUSNAK, to execute a Contract for Public Defense Services for July 1, 2009 through December 31, 2009, in substantial conformity with the contract attached hereto and denominated as Exhibit "A" and incorporated herein by reference.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 3. This resolution shall be in full force and effect upon passage and signatures hereon.

DATED and SIGNED this _____ day of _____ 2009.

CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam
City Clerk

APPROVED AS TO FORM:



Daniel B. Heid
City Attorney

DRAFT PUBLIC DEFENSE SERVICES CONTRACT
CITY OF AUBURN, WASHINGTON
JANUARY-JULY 1, 2009 – JUNE 30DECEMBER 31, 2009

THIS AGREEMENT made and entered into by the City of Auburn; hereinafter referred to as "CITY," and The Law Offices of Matthew J. Rusnak, hereinafter referred to as "PUBLIC DEFENDER," do hereby agree to the following terms and conditions:

I. APPOINTMENT OF DEFENDANTS FOR PUBLIC DEFENSE SERVICES:

A. General:

1. The CITY shall make public defense services available to all persons who so qualify after application to and approval of the Court or an independent public defense screen or are in custody and directly appointed by the Court. The PUBLIC DEFENDER will provide legal representation for each of these defendants from court appointment or screening through trial, sentencing, post conviction review, and any appeals to Superior court or Washington appellate courts. The PUBLIC DEFENDER, or subcontractor of the PUBLIC DEFENDER, will provide defense services at daily in-custody bail hearings, will attend the arraignment calendar, and will be available, in person, to talk to and meet indigent defendants at the Auburn Detention Center or other alternative locations. The PUBLIC DEFENDER will also provide representation for the Mental Health Court calendar and a Community calendar should one be established during the term of the contract.

2. Screening shall be available on a regular basis at or near the CITY'S municipal court. The CITY shall pay the cost of screening services. The CITY shall provide to the PUBLIC DEFENDER, at no cost, copies of all discoverable materials regarding persons qualifying for public defense services and a copy of the Auburn Municipal Code. At the request of the PUBLIC DEFENDER, copies of additions and amendments thereto will be provided.

B. Screening Procedure:

1. The criteria for appointment of the PUBLIC DEFENDER to represent indigent defendants shall be as follows: (1) the defendant is charged with a criminal offense by the CITY under the Auburn City Code; (2) the offense is one for which a person can be imprisoned; and (3) the defendant qualified financially for PUBLIC DEFENDER services pursuant to court rule and RCW 10.101.005 et. seq. and shows proof of income such as, but not limited to, unemployment benefit compensation, income tax returns, or pay stubs. Should the PUBLIC DEFENDER determine a defendant is not eligible for assigned counsel; the PUBLIC DEFENDER will so inform the court and move to

withdraw from the case.

2. Screening information shall be confidential and the defendant shall swear or certify under penalty of perjury that the information is true and complete. Upon appointment, the screener shall immediately deliver to the PUBLIC DEFENDER the screener's documents on each case that is assigned. The screener shall be responsible for delivering a letter of introduction, which has been provided by the PUBLIC DEFENDER to every defendant who qualifies for and is appointed to be represented by the PUBLIC DEFENDER. This screener shall obtain the defendant's mailing address and mail the letter of introduction to the defendant if necessary.

C. Reporting Procedures:

1. PUBLIC DEFENDER: The PUBLIC DEFENDER shall file monthly reports, with the CITY indicating the following: (1) the first, middle and last name of each defendant who has been appointed and a Notice of Appearance was filed; (2) date of appointment, criminal cause number(s) for the defendant; and (3) if the case was "conflicted" at any time during the process. Further, the report shall designate whether the defendant was appointed by the Court or by the screener. In addition, the PUBLIC DEFENDER shall provide a monthly report to the City showing all cases in which the defendant has been sentenced or acquitted. All reports are due to the City on the 1st day of the month following the appointment and filing of the Notice of Appearance or case disposition, along with the invoice, based on actual case count.

II. RESPONSIBILITIES OF PUBLIC DEFENDER

A. The PUBLIC DEFENDER shall be responsible to provide competent professional legal services to the defendants represented. The PUBLIC DEFENDER shall employ and/or associate a sufficient number of attorneys and staff to provide such service. The CITY shall incur no extra cost for the employed and/or associated attorneys and staff. The PUBLIC DEFENDER and each attorney so employed and/or associated shall be an active member in good standing of the Washington State Bar Association. Any attorney employed and/or associated by the PUBLIC DEFENDER who does not have at least three years of experience shall practice under the direct supervision of any attorney who does have three years experience. Such experience shall include at least one-third emphasis on criminal defense.

B. Legal interns involved in the representation of defendants in court must have all of their work reviewed and/or countersigned by a supervising attorney. No legal intern shall have sole responsibility for administering and representing any of the defendants appointed and represented pursuant to the contract herein.

C. Case loads of the PUBLIC DEFENDER and any individual attorneys

employed and/or associated therewith should be limited to that level of assignments which allows an attorney to give each defendant's case sufficient time and effort to assure effective representation. All attorneys representing defendants pursuant to the contract herein shall comply with the following: (1) attend at least an average of 15 hours of continuing legal education each year, of which at least an average of seven hours shall be specifically related to criminal defense or trial practice; (2) have regular and routine review of their caseload with a supervising attorney to ensure that there is objective monitoring and evaluation of each attorney.

III. SERVICES PROVIDED BY THE PUBLIC DEFENDER

A. Scope of Service:

1. The PUBLIC DEFENDER shall represent each defendant from the date of appointment (or at in-custody hearings as the case may be), through sentencing and the first appeal of right pursuant to the RALJ rules. The PUBLIC DEFENDER or the CITY may request re-screening of a defendant whose case is on appeal. Appeals shall not be considered new case assignments. In addition, the Public Defender shall be present at arraignment hearings on stand-by should a defendant request legal advice, ~~effective January 1, 2009.~~

2. Defendant defined: A single individual charged with a maximum of four (4) criminal counts on a maximum of two criminal citations arising out of the same general course of conduct over a short period of time. Example: a single person charged with three (3) different Driving While License Suspended charges would be counted as three (3) separate clients because the charges necessarily took place at separate times. However, a single individual charged with Reckless Driving, DUI, Hit and Run (Attended) and Driving While License Suspended arising out of one event (on two citations) would be counted as one client.

3. Case Count: A case is counted where: (1) Pretrial: Each pretrial case is counted only once. Irrespective of any subsequent reappointments pursuant to FTA. They will be counted at the time of first appointment. Cases subsequently conflicted, or where a private attorney is hired, will be noted on the next monthly report, but is not counted as a Public Defender case; (2) Post trial convictions: Case where a defendant was previously represented by the Public Defender, that were previously counted when they were in pretrial status, will not be counted unless they FTA at a post conviction hearing. Post conviction cases where defendants FTA and subsequently reappointed to the Public Defender will be counted again; however, this shall occur only once. No matter how many times a defendant FTA and the Public Defender is reappointed when the case is in the post-conviction status, the case will be recounted only once. ~~The PUBLIC DEFENDER agrees to transition all in progress cases from the previous PUBLIC DEFENDER, effective June 30, 2009 at no cost to the CITY. In the future, the~~

PUBLIC DEFENDER agrees to complete representation for any client for which a Notice of Appearance has been filed, whose case may have been set for trial after the even if court proceedings continue beyond the date when a successor public defender becomes responsible for public defense services. This does not include post conviction reviews.

4. The PUBLIC DEFENDER may associate or employ additional or different attorneys to represent defendants at no extra cost to the CITY. Any counsel associated with or employed by the PUBLIC DEFENDER shall have the authority to perform the services called for herein. All associated counsel hired pursuant to this section shall be admitted to practice pursuant to the rules of the Supreme Court of the State of Washington. Sufficient counsel shall be provided to represent defendants during vacation, illnesses, and settings in more than one courtroom. No legal interns shall be used unless agreed to by the CITY in advance.

5. Conflict Cases: Both parties agree that cases will be conflicted only when a recognized conflict occurs (not a potential conflict). Upon discovery of an actual conflict with the representation of a specific defendant by the PUBLIC DEFENDER (as defined in the Rules of Professional Conduct), the PUBLIC DEFENDER shall immediately inform the CITY, the court and the defendant in writing of the conflict by issuing a Notice of Intent to Withdraw. Only a partner in the PUBLIC DEFENDER'S firm will be permitted to make the final decision regarding whether a conflict actually exists. The PUBLIC DEFENDER will assist the City with a list of qualified law firms with which the CITY can contract for conflict public defense services. A minimum of four conflict firms will be maintained on the list.

6. Upon receiving notice of a conflict of interest and agreeing thereto, it will be the CITY'S financial responsibility to pay alternative counsel to represent the defendant. The Court will rotate, in order, "conflicted" cases to each firm. However, if the CITY contests the Notice of Intent to Withdraw, then the CITY shall immediately file a note for motion regarding the propriety of the withdrawal and request that the court notify the defendant and the PUBLIC DEFENDER of the date, time and nature of the hearing. All parties shall be bound by the court's ruling or any appeal therefrom.

7. Office appointments for the defendants appointed to the PUBLIC DEFENDER should be made available at least during regular business hours of 8:00 a.m. until 5:00 p.m., Monday through Friday. Office appointments should be made available, at an office located in the City of Auburn, within a reasonable distance from the municipal courthouse and on or near a public transportation service route. Appointments shall be available at the courthouse for defendants who are otherwise unable to obtain transportation to the PUBLIC DEFENDER'S office. Local non-service-charge phone service throughout the municipality shall be available as well as toll free and collect phone service from the CITY jail and the King County jails.

8. The PUBLIC DEFENDER will make every effort to coordinate cases with City prosecutors at least once per week, in advance of upcoming court dates.

9. The PUBLIC DEFENDER will be available for all calendars pursuant to the will of the court. The PUBLIC DEFENDER shall be able to simultaneously staff two active courtrooms with a minimum of one qualified lawyer in each courtroom. Further, the PUBLIC DEFENDER shall provide at least two attorneys on all pretrial calendars and in-custody pre-trial/review calendars and have available at least two attorneys for jury trial dates with at least two public defender clients scheduled for trial.

10. The PUBLIC DEFENDER shall provide to the City of Auburn Police Department and Auburn Detention Center the telephone number or numbers at which the PUBLIC DEFENDER can be reached twenty-four (24) hours each day for critical stage advice to defendants during the course of police investigations and/or arrests, as required by statute, case law and applicable court rule in municipal misdemeanor cases.

11. The PUBLIC DEFENDER shall provide to the screener for dissemination to every represented defendant a letter in plain, simple and concise language outlining the defendant's responsibilities with regard to the attorney-client relationship.

12. The PUBLIC DEFENDER shall institute and maintain a procedure to review defendants' complaints. Complaints, which are not immediately resolved by the PUBLIC DEFENDER, shall be referred to the Washington State Bar Association and/or the court.

13. Assignment or Subcontractors: No assignment or transfer of the Contract or of any interest in the Contract shall be made by the PUBLIC DEFENDER without the prior written consent of the CITY.

IV. COMPENSATION

Compensation to the PUBLIC DEFENDER for public defense services beginning ~~January 1~~ July 1, 2009 through ~~June 30~~ December 31, 2009 shall be paid at the rate of Twenty-Five Thousand Four Hundred Dollars (\$25,400.00)/month.

In the event the PUBLIC DEFENDER files an appeal on behalf of a qualified client, the CITY will pay an additional Four Hundred Dollars (\$400.00) to the PUBLIC DEFENDER upon its litigation and disposition. Should the CITY file an appeal in a case involving the PUBLIC DEFENDER, the CITY will pay the PUBLIC DEFENDER and additional Four Hundred Dollars (\$400.00) upon its litigation and disposition. In addition, the CITY will pay for transcription costs required for the appeal.

All videotapes, CDs, audiotapes, video disks, photocopies, color copies of images, or other media associated with discovery shall be provided by the City at no cost to the PUBLIC DEFENDER.

The PUBLIC DEFENDER will submit an invoice, no later than the 15th day of each month. Pursuant to regular CITY policy regarding payment for services rendered, the CITY shall make payment to the PUBLIC DEFENDER on the first day following the first CITY Council meeting following the timely submittal of the PUBLIC DEFENDER report and invoice.

V. TERM OF CONTRACT

This Agreement shall remain in full force and effect from ~~January~~ July 1st, 2009, through ~~June 30~~ December 31, 2009. Moreover, this Agreement may automatically be renewed under the terms of this contract through December 31, 2010, at the conclusion of the term of this Agreement, unless either party provides the other with notice of intent not to extend this Agreement. Said notice shall be received by the other party not less than thirty (30) days prior to the expiration of the term of this Agreement or the expiration of any extension thereof.

VI. POLICY AGAINST DISCRIMINATION

The PUBLIC DEFENDER shall not discriminate in employment practices on the basis of race, creed, color, age, disability, religion, sex or sexual orientation and follow the CITY's policy on non-discrimination. The PUBLIC DEFENDER should comply with all local, state, and federal laws regarding discrimination.

VII. PUBLIC DEFENSE STANDARDS

The PUBLIC DEFENDER shall comply with the Rules of Professional Conduct. The PUBLIC DEFENDER shall comply with the City of Auburn Standards for Public Defense as adopted by the CITY on December 18, 1989, pursuant to Resolution 2014 and any future standards for public defense services that may be adopted by the City pursuant to Chapter 10.101.030 of the RCW. The PUBLIC DEFENDER shall submit an affidavit to the Director of Human Resources/Risk & Facilities Management, stating that the PUBLIC DEFENDER is in compliance with such standards. This affidavit shall be submitted thirty (30) days after the PUBLIC DEFENDER has received a copy of such standards.

VIII. INSURANCE AND INDEMNIFICATION

Insurance

The PUBLIC DEFENDER shall be responsible for maintaining, during the term of this Agreement and at its sole cost and expense, the types of insurance coverages and in the amounts described below. The PUBLIC DEFENDER shall furnish evidence, satisfactory to the City, of all such policies. During the term hereof, the PUBLIC DEFENDER shall take out and maintain in full force and affect the following insurance policies:

- a. Commercial General Liability insurance, insuring the City and the PUBLIC DEFENDER against loss or damages arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the PUBLIC DEFENDER's Commercial General Liability insurance policy with respect to the work performed for the City, with minimum liability limits of \$1,000,000 combined single limit for personal injury, death or property damage in any one occurrence.
- b. Such workmen's compensation and other similar insurance as may be required by law.
- c. Professional errors and omissions liability insurance with minimum liability limits of \$1,000,000.

No Limitation. PUBLIC DEFENDER's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the PUBLIC DEFENDER to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

If, for any reason, the PUBLIC DEFENDER loses its professional liability insurance coverage, the PUBLIC DEFENDER must immediately notify the City's Director of Human resources/Risk and Facilities Management.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Professional Liability and Commercial General Liability insurance:

- a. The PUBLIC DEFENDER's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the PUBLIC DEFENDER's insurance and shall not contribute with it.
- b. The PUBLIC DEFENDER's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Indemnification

The PUBLIC DEFENDER shall indemnify, defend and hold harmless the City and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, including attorney fees, by any reason of or arising out of the act or omission of the PUBLIC DEFENDER, its officers, agents, employees, or any of them relating to or arising out of the performance of this Agreement except for injuries and damages caused by the sole negligence of the City. If a final judgment is rendered against the City, its officers, agents, employees and/or any of them, or jointly against the City and the PUBLIC DEFENDER and their respective officers, agents and employees, or any of them, the PUBLIC DEFENDER shall satisfy the same to the extent that such judgment was due to the PUBLIC DEFENDER's negligent acts or omissions.

IX. TERMINATION OF CONTRACT

A. Grounds for Immediate Termination. The City retains the right to immediately terminate this contract in the event either any of the following incidents occurs:

1. Failure to provide timely proof of comprehensive professional liability insurance due at any of the times required herein.

2. Loss of comprehensive professional liability insurance coverage regardless of the reason therefor.

3. Any action that, at the sole discretion of the City could bring discredit on the City.

B. Additionally, either the CITY or the PUBLIC DEFENDER may terminate this contract in the event of the following:

1. Any other breach of this contract; or
2. Violation of the Rules of Professional Conduct; or
3. Good and Sufficient Cause

Such termination under this subpart is effective only if the party terminating the contract has been provided written notice of the deficiency to the second party, and the deficiency is not corrected in a timely manner to the reasonable satisfaction of the first party.

Written notice of termination under Section IX (B) shall be given by the party terminating this contract to the other not less than sixty (60) days prior to the effective date of the termination.

C. In the event of termination or upon completion of the contract, the following conditions may apply: (1) the PUBLIC DEFENDER shall be relieved of any further responsibility for receiving new case assignments under this contract; (2) the PUBLIC DEFENDER will continue to represent those defendants assigned prior to the date of termination and who have a trial date set and shall complete representation in all such cases; provided that, after termination or completion of the contract pursuant to court rules and the Rules of Professional Conduct, the PUBLIC DEFENDER may withdraw from any case as permitted by court rule.

DATED this _____ Day of _____, 20082009.

CITY OF AUBURN

Peter B. Lewis
Mayor

ATTEST:

Danielle E. Daskam
City Clerk

Date _____

APPROVED AS TO FORM:

Daniel Heid
City Attorney

Date _____

Law Offices of Matthew J. Rusnak

Representative

Date